



**MINUTES  
SCOTTSDALE PLANNING COMMISSION  
COMMUNITY DESIGN STUDIO  
7506 E. INDIAN SCHOOL ROAD  
SEPTEMBER 29, 2004**

**PRESENT:** David Gulino, Chairman  
Steve Steinberg, Vice Chairman  
David Barnett, Commissioner  
James Heitel, Commissioner  
Eric Hess, Commissioner  
Jeffrey Schwartz, Commissioner  
Steven Steinke, Commissioner

**STAFF:** Pat Boomsma  
Tim Curtis  
Kroy Ekblaw  
Randy Grant  
Kurt Jones  
Phil Kercher  
Al Ward  
Kira Wauwie  
Greg Williams

**CALL TO ORDER**

The regular meeting of the Scottsdale Planning Commission was called to order by Chairman Gulino at 5:15 p.m.

**ROLL CALL**

A formal roll call confirmed members present as stated above.

**APPROVED**

## **MINUTES APPROVAL**

September 1, 2004

**COMMISSIONER HEITEL MADE A MOTION TO APPROVE THE SEPTEMBER 1, 2004 MINUTES AS PRESENTED. SECOND BY COMMISSIONER HESS.**

**THE MOTION PASSED BY A VOTE OF SEVEN (7) TO ZERO (0).**

## **CONTINUANCES**

19-UP-2004 (The Coach House) request by Jorden Bischoff McGuire Rose & Hiser, PLC, applicant, Jim Brower for Coach House, owner, for a conditional use permit for a bar on a 3,700 +/- sq. ft. parcel located at 7011 E. Indian School Road with Central Business District; Downtown Overlay (C-2, DO) zoning.  
**Continued to October 13, 2004.**

12-ZN-2004 (Miller & McDonald) request by DEI Professional Services, applicant, Arizona American Water Company, owner, to rezone from Single Family Residential (S-R) on a 4 +/- acre parcel located at 5975 N. Miller Road. (Southwest Corner of McDonald Drive & Miller Road).  
**Continued to October 27, 2004.**

**COMMISSIONER HEITEL MOVED TO CONTINUE CASE 19-UP-2004 TO THE OCTOBER 13, 2004 PLANNING COMMISSION MEETING AND CASE 12-ZN-2004 TO THE OCTOBER 27, 2004 PLANNING COMMISSION MEETING. SECOND BY SCHWARTZ.**

**THE MOTION PASSED BY A VOTE OF SEVEN (7) TO ZERO (0).**

## **INITIATION**

24-UP-2004 (City of Scottsdale Arsenic Treatment Facility Site 115) request by the city of Scottsdale, to initiate a conditional use permit for a Municipal Use Master Site plan to construct an arsenic treatment facility.

**COMMISSIONER HEITEL MOVED FOR APPROVAL OF INITIATION FOR CASE 24-UP-2004. SECOND BY SCHWARTZ.**

**THE MOTION PASSED BY A VOTE OF SEVEN (7) TO ZERO (0).**

## **EXPEDITED AGENDA**

13-AB-2004 (June & Eric Hess) request by Beus Gilbert PLLC, applicant, Eric & June Hess, owners, to abandon a portion of the right-of-way on the 84<sup>th</sup> Street alignment located south of Via Dona Road and west of Pima Road.

(COMMISSIONER HESS DECLARED A CONFLICT AND DID NOT PARTICIPATE IN THE VOTE.)

**COMMISSIONER HEITEL MOVED TO FORWARD CASE 13-AB-2004 TO THE CITY COUNCIL WITH A RECOMMENDATION FOR APPROVAL. SECOND BY COMMISSIONER SCHWARTZ.**

**THE MOTION PASSED BY A VOTE OF SIX (6) TO ZERO (0) WITH COMMISSIONER HESS ABSTAINING.**

86-ZN-1984#2 (Scottsdale Place Office Condominium) request by Earl Curley & Lagarde, PC, applicant, Principal Mutual Life Insurance, owner, for stipulation amendments to case 86-ZN-1984 on a 10 +/- acre parcel located at 5685 N. Scottsdale Road with Service Residential District (S-R) zoning.

3-GP-2004 (Horseman's Park –South Parcel) request by Beus Gilbert PLLC, applicant, North Scottsdale PK INV LTD Part 1, owner, for a General Plan Land Use Element Amendment from Suburban Neighborhoods to Office on a 4.6 acre parcel located at the northeast corner of 98<sup>th</sup> Street and McDowell Mountain Ranch Road.

6-GP-2004 (Miller & McDonald) request by DEI Professional Services, applicant, Arizona American Water Company, owner, for a General Plan Land Use Element Amendment from Rural Neighborhood to Office on a 4 +/- acre parcel located at 5975 N. Miller Road (Southwest corner of McDonald Drive and Miller Road.)

**CHAIRMAN GULINO** reported there is several citizen comment card on case 6-GP-2004 noting they will allow these people to speak but leave this item on the consent agenda.

(CHAIRMAN GULINO OPENED PUBLIC TESTIMONY.)

**MICHELLE BORIE**, 5814 E. Miller Road, spoke in opposition to this request. She stated that she lives approximately 30 feet from the property in question. She further stated that she recently moved into this neighborhood because of the rural character. She remarked that she felt it was important for the City of Scottsdale to preserve the few rural neighborhoods in the southern part of the city. She recommended they not change the zoning. She commented on the reasons why she would prefer not to have an office complex on that property

such as decrease in residential property values, degrading the rural character of the neighborhood, and decrease the quality of life for the residents.

**TAMARA MONSON**, 7749 E. Solano Drive, spoke in opposition to this request. She stated she would urge the Commission to reject both the GP amendment and rezoning request. The General Plan was put in place and voted on by the citizens of Scottsdale and this request is not in keeping with the citizens' best interest. She reported that at the meeting in August the Commission requested that DEI send somebody door to door to talk to the residents. This did not occur until last week and they discovered at that time that several people were opposed to the General Plan amendment and rezoning. She remarked that ultimately Arizona American wants to rezone this property to the highest bidder and redevelop as office and they do not care about the neighborhood or the residents. She asked the Commission to take into consideration the rural feel of the neighborhood.

**JANE KANTOR**, 5644 N. 75<sup>th</sup> Place, spoke in opposition to this request. She expressed her strong objection to rezoning this from rural neighborhoods to office. This area already is very congested with traffic and office versus residential only would create additional traffic. She requested the Commission examine the traffic issue before making a decision.

**MARIA BELL**, 7675 E. McDonald Dr. #217, stated that she had concerns regarding the site plan and would like those concerns resolved. She further stated it is her understanding the comments they made for the Citizen Review Report went to the zoning and not for the general plan amendment. She remarked that she could not say that she falls one way or another on the change in the General Plan at this point but there are a number of issues that need to be resolved. She further remarked that she is for getting the best solution for this property and is prepared to work with the developer in an honest and fair manner. She inquired what is our assurance from the owner's of the property that this land will be developed properly in fairness to the residents.

**CHAIRMAN GULINO** stated that issues regarding the site plan will be addressed with the zoning case. Ms. Bell stated that she understood that but if there is a change to the General Plan, that would probably allow a change in the zoning.

(CHAIRMAN GULINO CLOSED PUBLIC TESTIMONY.)

**JOHN BERRY**, 4800 N. Scottsdale Road, reported that he just got involved with this case last week and made a concerted effort to reach out to the neighborhood to continue the zoning case to work with these neighbors. He commented that he looks forward to working with the neighbors on the zoning case. Their mission is to make this a better site plan for the neighbors.

(CHAIRMAN GULINO OPENED PUBLIC TESTIMONY.)

**JOEL BORIE**, 5814 E. Miller Road, spoke in opposition to this request. He stated that he and his wife just moved into this neighborhood because of the rural character. He further stated that going to office does add anything to the neighborhood and in fact would take away. The General Plan states this area was intended to be rural.

(CHAIRMAN GULINO CLOSED PUBLIC TESTIMONY.)

**COMMISSIONER HEITEL** stated that when the Commission saw the zoning case before he was disturbed with the plan that was presented. He further stated that he will be very particular in looking at access issues, impact issues from parking lots and those types of things. He remarked that nobody should infer from his support of the General Plan portion that he would automatically be approving the zoning case.

**COMMISSIONER HEITEL MOVED TO FORWARD CASE 6-GP-2004 TO THE CITY COUNCIL WITH A RECOMMENDATION FOR APPROVAL. SECOND BY COMMISSIONER HESS.**

**THE MOTION PASSED BY A VOTE OF SEVEN (7) TO ZERO (0).**

**CHAIRMAN GULINO** stated that this is my neighborhood and he is familiar with it and felt that particular use if it is done right is appropriate. He further stated that corner does not warrant residential given its proximity to McDonald.

**COMMISSIONER STEINKE MOVED TO FORWARD CASES 86-ZN-1984#2 AND 3-GP-2004 TO THE CITY COUNCIL WITH A RECOMMENDATION FOR APPROVAL. SECOND BY COMMISSIONER HESS.**

**THE MOTION PASSED BY A VOTE OF SEVEN (7) TO ZERO (0).**

### **REGULAR AGENDA**

16-ZN-2004 (The Legends At Toscana) request by Lifestyles Custom Builders LLC, applicant, Collin Thorstenson, owner, to rezone from Single Family Residential (R1-35) to Single Family Residential District Planned Residential District (R1-7 PRD) with amended development standards on a 10 +/- acre parcel located at 12855 N 94<sup>th</sup> Street (southwest corner of Sweetwater Road and 94<sup>th</sup> Street).

(COMMISSIONER SCHWARTZ DECLARED A CONFLICT AND DID NOT PARTICIPATE IN THE DISCUSSION OR THE VOTE.)

**MR. JONES** presented this case as per the project coordination packet. Staff recommends denial of the rezoning and amended development standards. A plan with fewer than 30 lots and more open space is more compatible with the existing rural/suburban character of the area.

**COMMISSIONER HEITEL** requested staff elaborate on the recommendations for the Cactus Corridor Study regarding the suggested transition zone. Mr. Jones pointed out the transition areas on the graphic.

**VICE CHAIRMAN STEINBERG** inquired about the rationale for denial of this case since the zoning is the same in the surrounding area as the zoning requested here. Mr. Jones replied the recommendation was based on the eclectic mix of zoning categories that surround this site and staff felt the zoning that is being presented is the same and they felt there should be a mix in the character of residential in the area.

**COMMISSIONER STEINKE** stated that he looked at this in context of the adjacent area and it looks like a good plan and an improvement to the property.

**COMMISSIONER BARNETT** inquired if staff was okay with the amended development standards. Mr. Jones stated they are comfortable with the amended development standards they allow some flexibility in lot design and housing type. It is the density.

Commissioner Barnett stated this proposal only has one entryway one ingress, egress. He inquired if there are any additional problems with the Police, Fire protection that would necessitate having an emergency entrance other than the one main entrance. Mr. Jones replied in the negative.

**LOU JEKEL**, Jekel & Howard, 8283 N. Hayden Road, Suite 100, addressed the density issue. He further stated the Cactus Corridor Study indicates that we want to maintain the rural atmosphere on the east side of 96<sup>th</sup> Street and suburban on the west side of the street. He explained that there is no transition where this property is. This piece of property is no longer suited as a horse property or buffalo ranch. It is land locked. He commented this proposal is 25 percent less dense than the surrounding properties. The request is compatible with the surrounding properties. He urged approval.

**COMMISSIONER HEITEL** inquired if the plan was restricted to be consistent with the size of the residential neighboring properties if the applicant would be willing to accept that as criteria for approval. Mr. Jekel stated that the product has to be salable within current standards. The average size of the homes would be 3,000 square feet. He provided information on the sizes of home in the area. It is their belief that the style of home going in there belongs in the neighborhood. It will be market driven and a project that everyone will be proud of. The bottom

line is that this is not a transition area and the applicant is asking for less than anything that is around it.

(CHAIRMAN GULINO OPENED PUBLIC TESTIMONY.)

**JOE CASELLA**, 9460 E, Corrine Drive, spoke in favor of this request. He stated he is directly south of the buffalo ranch. This development would fit nicely within the community and is 25 percent less dense than the surrounding properties. This proposal will revitalize the neighborhood with a fresh updated look. The majority of the residents are in favor of this request. This parcel is outdated. He concluded that he strongly supports the rezoning of this parcel

**JACQUELINE REICHMAN**, 12926 n. 95<sup>TH</sup> Way, spoke in favor of this request. She stated she is Vice President of the Homeowners Association for Sweetwater Ranch Manner II. She further stated that she was speaking on behalf of many people in Sweetwater. She reported that her neighborhood is unanimously in favor of this request. She reviewed the reasons the community supports this request.

**JOSHUA WEISS**, 9421 E. Dreyfus Place, spoke in support of this request. He stated that he could see the Buffalo Ranch from his bedroom with that said he fully supports this project. He further stated that the Buffalo Ranch sticks out and does not seem appropriate. He concluded all of the neighbors support this request.

**SUSAN WHEELER**, Cactus Corridor, spoke in opposition to this request. She presented information on why we did the Cactus Corridor Study. She also presented information on the ranches that came in after the Cactus Corridor Study was done. She reported that she does not support the Buffalo Ranch being developed with such high density. She further reported that the neighbors are upset with the ranch and the neighbors would be happy with any development that came in if the ranch were not there. She concluded her issue is the density is too great for this area and should be R1-18.

**DAWN BROKAW**, Cactus Corridor, stated the Cactus Corridor area has traditionally been an equestrian area, long before the high density that is there now. She further stated there have been many complaints from neighbors about this ranch. She discussed newspaper articles regarding people who move into an area such as an equestrian area or airport and then complain. She reported that she spent 14 years of her life working on the Cactus Corridor Study to protect this unique area.

**TONY NELSEN**, 7736 E. Redbird Land, spoke in opposition to this request. He stated he lives in the Desert Foothills area and we have been fighting some of the very same battles as the people in the Cactus Corridor. He further stated

that he would leave this as it is zoned noting that we have increased the density in this city beyond the capacity to handle the population.

(CHAIRMAN GULINO CLOSED PUBLIC TESTIMONY.)

**MR. JEKEL** stated that the last three speakers have brought up a very serious issue in the community but is not an issue that applies to this property. The applicants' are getting caught up in the battle between the horse people and those people who have moved into the area and are not horse property owners who are encroaching upon the horse area. The problem that he has with their position on this property is the horse is already out of the barn this property is already surround by medium density development. This property is land locked. This will be a quality development and the majority of the people support this request.

**COMMISSIONER HEITEL** stated that he agrees with the applicants' attorney that this is not a horse property. He further stated the problem he has is the density issue. One of the problems is ongoing in the city is that we cause neighbors and neighborhoods to go through this excruciating process of the character area study and they spend decades of their lives and then we forget them when an isolated parcels come in. The staff recognizes the Cactus Corridor Study as a viable study and based on that study recommended denial.

**COMMISSIONER HEITEL MOVED TO FORWARD CASE 16-ZN-2004 TO THE CITY COUNCIL WITH A RECOMMENDATION FOR DENIAL. SECOND BY VICE CHAIRMAN STEINBERG.**

**CHAIRMAN GULINO** stated that he felt the case was in line with polices and plans that we have and would support this request.

**VICE CHAIRMAN STEINBERG** stated the reason he supports the motion for denial is not because Mr. Jekel's comments were not full of common sense but because of what he is afraid is going to happen to Larkspur Drive and the area to the south. He further stated the erosion of the equestrian lifestyle is disheartening to him. If we don't make an issue of eliminating ranches just to get as much density and make as much economic gain as possible then we will see the end of the western lifestyle out here. He noted that he was torn because of all of the neighborhood support but felt at this point would be willing to support anything on this site other than tripling the density.

**COMMISSIONER STEINKE** stated in this case the arguments relative to density and equestrian properties are weak enough that he could not support the motion to deny.

**CHAIRMAN GULINO** called for the vote.



**THE MOTION FAILED BY A VOTE OF THREE (3) TO THREE (3) WITH CHAIRMAN GULINO, COMMISSIONER BARNETT, AND COMMISSIONER STEINKE DISSENTING AND COMMISSIONER SCHWARTZ ABSTAINING.**

7-UP-2004 (Sonrise Community Church) request by Earl Curley & Lagarde, PC, applicant, Sonrise Community Church, owner, for a conditional use permit for a private/charter school on a 9 +/- acre parcel located at 29505 N. Scottsdale Road with Single Family Residential, Environmentally Sensitive Lands, Foothills Overlay District (R1-70 ESL FO).

**MR. GRANT** presented this case as per the project coordination packet. Staff recommends although there will be impacts of any new development, staff assessment is that the requested Conditional Use Permit conforms to ordinance requirements and recommends approval, subject to the attached stipulations.

**COMMISSIONER HEITEL** stated with regard to the use permit criteria it seems we would be dumping the responsibility of policing those uses on the neighbors. Mr. Grant replied from a practical standpoint the neighbors are the people who see the activities day in and day out and are the people who are the most affected by the activities on the site. He reported we do attempt to monitor the site to the best of our capabilities.

**VICE CHAIRMAN STEINBERG** inquired if the school was envisioned in the original master plan for Sonrise Church. Mr. Grant replied it was not part of the plan presented. Vice Chairman Steinberg stated during that case there was a stipulation for an alignment drive to occur. Mr. Grant replied in the affirmative. The stipulation was for a cross access easement to the north. Recently the property owner to the north has given approval for that to occur.

Vice Chairman Steinberg stated staff indicated there would be large functions. He inquired how that would be defined. Mr. Grant stated it would be a function of the capacity of the building. There is a 395-seat capacity in the gymnasium building

Vice Chairman Steinberg inquired where the 200-student enrollment number came from. Mr. Grant replied the applicant proposed the number.

**COMMISSIONER HESS** inquired if the enrollment is limited to 200, what would be the procedure if the applicant chooses to increase the enrollment. Mr. Grant replied they would have to come for an amendment to the use permit that would go through the same process that the use permit went through.

**COMMISSIONER HEITEL** inquired about the theater building that has 395 seats and how its size compares to other commercial theaters relative in size. Mr. Grant stated a good analogy would be a single basketball court building in a

grade school where you would have hard wood floors, stage, fold out tables for a lunchroom. It is truly a multi-purpose building.

**COMMISSIONER SCHWARTZ** inquired if there has been any consideration about how to prevent overflow parking and drop offs on 74<sup>th</sup> street. Mr. Grant replied there has been consideration and it would be a fairly inconvenient way to get on the property but they cannot guarantee no one will use 74<sup>th</sup> Street. Commissioner Schwartz inquired if there was any thought to putting no parking signs. Mr. Grant replied that would be a possibility if it was determined there is a problem.

**COMMISSIONER HESS** inquired when the traffic count was taken. Mr. Grant replied May 2003 and June 2004. Commissioner Hess expressed his concerns regarding the traffic in this area.

**CHAIRMAN GULINO** reminded everyone that we are not here to discuss the merit of whether this is a good school but rather the appropriateness of whether a school of this size fits in this location. He inquired by a show of hands that supports or opposes the project. A show of hands indicated the crowd was almost evenly divided on whether to support the project.

**LYNNE LAGARDE**, Earl Curley & Lagarde PC, 3101 N. Central, Phoenix, AZ, stated the Sonrise Church School Use Permit has received the most exhaustive review for compliance with all city regulations than any use permit case she has ever handled. The staff report confirms that the use permit complies with and meets all ordinances and regulations of the city. She stated that the applicant respects the regulations of the city and does not expect to be exempt from them. She reviewed the layers of regulation.

Ms. Lagarde reported in addition to the local regulations there are higher law that applies and that is the Constitution of this Country. She further reported that at the direction of the Chairman and City Attorney she would not go into a great deal of detail on the legal issue but thought it was important to make you aware of the first amendment. Congress has enacted the religious land use and institutionalized person's act to make sure that in land use decisions governments protect the right of religious freedom and religious exercise.

Ms. Lagarde stated they have one stipulation issue and that is the requirement that they put a 7.5-foot wide trail easement along the northern property line from Scottsdale Road to 74<sup>th</sup> Street. We believe that a better connection for this local trail system would be to dedicate 15-foot easement on the east side of the property and take that trail up to the property and take that trail up 74<sup>th</sup> Street. We believe that would be a safer location for the trail.

Mr. Grant passed out a copy of the proposed alternative to that stipulation that the applicant is proposing.

Ms. Lagarde discussed the use of the multi-purpose building noting that the events at this facility would not be held at the same time of Sunday morning service so there will not be a conflict and would be willing to stipulate to that.

She reported the church has redesigned the site plan at great expense to address neighborhood impacts and to address the AO Zone.

She concluded the use permit request meets all of the requirements as outlined in the staff report. The church wants to be a good neighbor so we are requesting approval.

**COMMISSIONER HEITEL** asked Ms. Lagarde hypothetically if she lived in the City of Scottsdale, and wanted to live in a desert rural environment like the Desert Foothills, would she consider an asset to have a 390 capacity theater and a 290 car parking lot where you thought there would be residential. Ms. Lagarde replied that she would consider it an asset and explained why.

Staff members' and the Civil Engineer for the project provided additional information and clarification regarding the many concerns brought up by the commissioners' regarding the drainage report. Information was provided on the distinction between an AO Zone and a Flood plain.

**COMMISSIONER SCHWARTZ** inquired how the church arrived at the size of the gymnasium multi-use facility. Ms. Lagarde replied it is a standard basketball court there is a cafeteria kitchen function, small office, storage, and a back of stage area. She reviewed the dimensions of the building.

(CHAIRMAN GULINO OPENED PUBLIC TESTIMONY.)

**JIM WILLIAMS**, Sonrise Church, spoke in support of this request. He stated he is the Pastor of Sonrise Community Church. He explained the project will provide a needed service to parishioners interested in Christian education for their children. A Christian School is not a school per say (so much) as it is an extension of our Christian faith. He reported that they want to have a good relationship with the neighborhood. He further reported that this request complies with all of the City Ordinances and regulations.

**VICE CHAIRMAN STEINBERG** requested information on the children who would attend the school if they would come from outside of this area. Mr. Williams explained the students would primarily be from their congregation but enrollment would be open to the public. He noted at this point we do not know if the

students would be from outside of this area. He reported the demographic study we did indicated there is a need for this type of facility in the area.

**COMMISSIONER HEITEL** stated the Pastor has characterized the opposition to your school in the neighborhood as being opposed to Christian schools and you felt you were engaged in a spiritual warfare. He inquired if Pastor recognized that some of the opposition in the neighborhood is properly founded by equal passion to preserve rural desert lifestyle.

He inquired if they felt because they characterize themselves as a Christian School that they have the right to do anything anywhere they want without regard to equally passionate views of the neighbors attempting to protect their lifestyles. He noted that he has not voted against faith based or alternative schools and is a strong support but is disturbed by this undercurrent.

Mr. Williams stated he does respect people's alternate views. He described the conflict between Christian and worldviews. He further stated that everyone has the right to his or her own opinion. He remarked that he does not believe that they could look at and mischaracterize some of the things that have occurred to be less than spiritual warfare.

**MIKE STEFFES**, 30826 N. 74<sup>th</sup> Place, Cave Creek, spoke in support of this request. He stated that they comply with all of the ordinances and codes. He further stated the church tried to accommodate the concerns of nearby neighborhoods by redesigning its site plan to buffer between the school and Scottsdale Road. He reported there is a need for quality education.

**SYDNEY HAY**, 8787 E. Yearling Road, spoke in support of this request. She stated that she is a member of Sonrise Community Church. She further stated that she has had a long-standing interest in Christian education. She remarked this plan would not have a negative impact on the community.

**RICH ENDICOTT**, 27638, N. 61<sup>st</sup> Place, spoke in support of this request. He stated staff has addressed the traffic and drainage concerns. He further stated that the worship service at the church does not have much impact on the traffic.

**SKYLER COTA**, 8757 E. Arroyo, spoke in support of this request. He stated that he is a resident of Scottsdale and a member of Sonrise Community Church and has children that would attend the school. The church has been a good neighbor. He further stated the church has redesigned the plan in response to the neighbors concerns.

**BRUCE BILBREY**, P.O. Box 5970 Carefree, spoke in support of this request. He addressed the issue of property values. He presented information on how

comparable schools have increased property values. He noted there is a need for the school.

**GARY SCHMITT**, P.O. Box 514 Cave Creek, spoke in support of this request. He supplied the Commission with information on the group he was involved with the preservation of Spur Cross Ranch. He stated many of the neighbors that have moved into this area moved in after there was already at least one church. He reported this request complies with all of the city requirements. He further reported that he was in favor of the alternative stipulation for the equestrian path for safety and liability reasons.

**NANCY WINSHIP**, P.O. Box 4217 Cave Creek, spoke in support of this request. She stated she is a native of Scottsdale and the last 13 years in Cave Creek. She further stated that she has been blessed to have her children attend Scottsdale Christian Academy explaining that they have to go 30 miles each way. She requested the Commission rule in favor of Sunrise Community Church.

**GENE ASHLEY**, 30382 N. Palo Brea Drive, spoke in support of this request. He stated he lives in a development about a half a mile north of the Sunrise Community church, and in that development 50 percent have children. He further stated the issue is education and the importance of education. He remarked that zoning is important but it is not as important as education. He further remarked that parents in this area want this school.

**GRAHAM KETTLE**, 29651 N. 74<sup>th</sup> Street, spoke in opposition to this request. He stated that the residents of the community would attest that this application does not satisfy the requirements of the use permit criteria. He further stated that this is not a church or school issue. What they oppose is high-density development in an area of low-density residential. This request does not comply with the Foothills Overlay or ESLO. It does not retain the visual character or significant open space. He provided additional information on the drainage concerns on this site. He remarked a school on the site would be dangerous because it would sit in a flood hazard zone. Placing a child in this environment would be plainly irresponsible.

**COMMISSIONER HEITEL** inquired if it was Mr. Kettle's expectation when he bought his property that you were buying into a promise that Scottsdale made in regards to the character areas. Mr. Kettle replied that was an important reason in the selection of this house that it was positioned in the Desert Foothills. He stated his fundamental concern regarding this project is the scale of the buildings.

**VICE CHAIRMAN STEINBERG** inquired where the majority of the 500 people whom signed the petition in opposition live in relation to Sunrise. Mr. Kettle replied they live in close proximity.

Mr. Kettle responded to questions from the Commissioners' regarding drainage issues in the area. City staff members' provided additional clarification and discussed some of the drainage issues and challenges in this area.

**DEBBIE WIEGERS**, 29294 N. 74<sup>th</sup> Street, spoke in opposition to this request. She stated the granting of a conditional use permit is based on a degree of trust by the city to the applicant. The city trusts the applicant to follow any imposed stipulations or land use restrictions on sensitive building designs and conduct neighborhood outreach. The applicant's plan does not conserve the desert. She reviewed the track record of the applicant noting that there are several examples on noncompliance with key stipulations that were set out in 95-DR-98. She reviewed the stipulations that were not complied with. She discussed the issue of decreased property values because of the school. She added the majority of the neighborhood is opposed to this project.

**HOWARD MYERS**, Desert Property Owners' Association, 6631 E. Horned Owl Trail, spoke in opposition to this request. He discussed the traffic issues the issue is not the capacity of the road, which is what is always analyzed. The issue is the safety of that road for the people who live in that area and must drive that road. And for that reason, the analysis numbers are flawed. He reviewed the major flaws in the analysis. He discussed the traffic patterns on Morning Vista and Sunrise North. He also discussed the impact to 74<sup>th</sup> Street and the impacts to Scottsdale Road.

**JAMES STRESS**, 29450 N. 74<sup>th</sup> Street, spoke in opposition to this request. He stated his property abuts this proposed development. He discussed why this proposal does not adhere to the Foothills Character Plan that states where possible school sites should not abut low-density residential neighborhoods. He provided information regarding why this proposal is in noncompliance with Sec. 1.401 CUP.

**JULIE WECHSLER**, 29551 N. 74<sup>th</sup> Street, spoke in opposition to this request. She stated this is a commercial development for a school/gymnasium/theater that does not serve the local community. She provided information on the demographics in the area. She further stated the demographics as presented by an earlier speaker were inaccurate. She discussed the type of concerts that have been held at the Sunrise Community Church. She presented her concerns regarding the traffic analysis.

**LOIS DRINKWATER THOMPSON**, 29397 N. 74<sup>th</sup> Street, spoke in opposition to this request. She stated when she moved into her house she did not choose to move in next to a school she chose to move into the Sonoran desert. She discussed why people chose to live in the Desert Foothills Overlay. She requested that this request be denied because of the character of the area, property values, and the quality of life.

**COMMISSIONER HEITEL** inquired if based on the representations of the City of Scottsdale to characterize these areas for preservation, if she would consider this a violation of trust given in that regard. Ms. Drinkwater Thompson replied in the affirmative.

**COPPER PHILLIPS**, Scottsdale Saddle Club/POA, spoke in opposition to this request. She stated that her big concern is the equestrian community. This is a horse-zoned area. She further stated that she is a strong advocate of schools. She explained that there is a place for everything and this is not the place for a school. She remarked that we need to protect the highly used trails in this area.

**LINDA WHITEHEAD**, 9681 E. Chuckwagon Lane, spoke in opposition to this request. She stated the Commission's role is to review applications to try and determined if they meet the city requirements and make a recommendation to the City Council. In reviewing the applications' they rely on guidance from staff. She discussed her issues regarding the information presented on the drainage issues and placing a school in a flood hazard area. She noted that it has been required the school obtain a cross access agreement and that has not been met. She added the DR stipulations have not been resolved.

**BOB VAIRO**, Coalition of Pinnacle Peak, spoke in opposition to this request. He stated this is a land use issue and a neighborhood planning issue. It is not a church or religion issue. He remarked that everyone in the room might not be aware of the five-page letter from Ms. Lagarde, the zoning attorney for the applicant, that deals only with one issue the constitutionality and religious land use and institutionalized person's act. The letter does not discuss if the applicant met the requirements of the conditional use permit. He commented on the intimidating nature of the letter. He reported the neighbors have tried to work out their differences. He urged the Commission make a recommendation for denial.

**TOM CRAIG**, 29233 N. 70<sup>th</sup> Way, spoke in opposition to this request. He stated there are 65 homes in their development and there are less than 10 children. He expressed his concerns regarding this high-density development. He also addressed his concerns regarding the traffic.

**CHARLES SANDHOFER**, 29525 N. 69<sup>th</sup> Place, spoke in opposition to this request. He stated he is the President of Carriage Hills Homeowners Association. He discussed his concern regarding the level of traffic at this intersection.

**RICK MINEWEASER**, Las Piedras Homeowners Association, 7669 E. Baker Drive, spoke in opposition to this request. He stated that the proposed plan would have a direct impact on their quality of life. He further stated he felt the reasons for denial is because of the traffic, drainage concerns as well the school would be a commercial development.

**MICHAEL BRADLEY**, Sincuidados HOA Board of Directors, 8300 Dixileta Drive Lot 263, spoke in opposition to this request. He stated at the April 27<sup>th</sup> Board of Directors meeting they discussed this conditional use permit and voted to oppose this development because of the negative traffic impact and the negative affect on the character of the area. Since the April 27<sup>th</sup>, meeting a petition circulated and 30 were in opposition and two in support.

**TONY NELSEN**, Desert Foothills POA, 7736 E. Redbird Road, spoke in opposition to this request. He stated that he was impressed by the sophisticated level of detail our residents were forced to come up with to come to do battle in these chambers. He addressed the issue of character and the intent and spirit of the Foothills Overlay and the ESL Ordinance. He reported that this is a special place to live. He provided history on the site. He expressed his concern regarding the drainage issues and the density of this proposal. He noted that he was tired of Ms. Lagarde trying to eliminate the trails on the General Plan.

**JANE RAU**, 8148 E. Dale Lane, spoke in opposition to this request. She stated the biggest thing about this is that it should be denied to stop tragedy. She provided information regarding serious drainage and traffic concerns.

**SUSAN WHEELER**, Cactus Corridor, 9616 E. Kalil, spoke in opposition to this request. She requested this school is denied because of the negative impact it will have on the neighborhood. She further stated that the trail on the General Plan on Scottsdale Road should be 50 feet anything smaller is dangerous.

**DAWN BROKAW**, 9909 E. Paradise Drive, spoke in opposition to this request. She stated she lives in the Cactus Corridor and there are a lot of things in common with this case and the case before it. She inquired why they do character studies if they are not going to be adhered to. She stated they couldn't make meaningful decisions about areas when you don't consider aggregate. It there are churches and schools one right after another they overwhelm the streets, the character studies, drainage, and it is impossible to plan.

(CHAIRMAN GULINO CLOSED PUBLIC TESTIMONY.)

**MS. LAGARDE** stated after listening for all of these hours to opposing testimony she has been trying to figure out what the opposition is really about. She further stated that she felt the Planning Commission needs to be able to separate fact, fear, professional analysis, confusion and misapplication of technical analysis from people without the professional expertise.

She reported that the people at Sonrise Church care as much about the desert as the people in opposition. She further reported that she felt the key issue is character and what that means. The character plan does not require that every use within the area is a single-family home. If that were the case, there would be



no churches or schools. She stated that there appears to be a different view of what makes a neighborhood and what makes a community.

She stated the drainage plan and traffic study have been prepared by professionals. She provided information that the property values in the area would not decrease because of the school.

She reported they have met all of the criteria and this school will be a good neighbor. She urged approval of this request.

**VICE CHAIRMAN STEINBERG** inquired why they need 11,000 square feet for 200 students noting that square footage could accommodate 700 students. Ms. Lagarde reported the enrollment is limited to 200 students and if they wanted to increase it, they would have to come back. Vice Chairman Steinberg suggested that they could consider something less obtrusive. Dale Miller, architect, reviewed the classroom dimensions. He explained it is not all classrooms there would be a library, and computer room.

**COMMISSIONER HESS** asked for an explanation regarding the noncompliance with case 95-DR-98 in not installing a berm, a cross access, not re-vegetating, and here we are in 2004 and that still is not done. He stated this seems like a poor neighborly attitude and an attitude of non-cooperation. He further stating he does not understand the posture of Sonrise saying they are a good citizen.

Ms. Lagarde stated regarding the cross access easement the city or the applicant does not have the mechanism to legally force our neighbor to grant that easement. She further stated that they did re-vegetate all of that areas that were disturbed during construction that were not going to be covered by buildings. It was always known that buildings would cover this area. The Pastor of the church provided information on their attempts to contact the Methodist church regarding cross access noting the last attempt was in 2002.

**COMMISSIONER HESS** inquired why the berm was not installed. The Pastor stated that he could not answer that question. Commissioner Hess stated that since that DR stipulation has not adhered to what is to make us believe they would install the four-foot berm at the back of the property. Ms. Lagarde stated the Scottsdale Ordinance allows berming or landscape screen, or screens walls to screen parking and maybe the determination of staff was the landscaping installed satisfied the requirement. Commissioner Hess stated that at some point he would like information on what the solution was.

**CHAIRMAN GULINO** inquired if the overlay ordinance restricts this type of use next to low density residential. Mr. Grant replied in the negative. He explained the ordinance has requirements for development in the Foothills Overlay area. The Design Guidelines were developed to provide a basis for the implementation

of the Foothills Overlay. The Design Guidelines can be interpreted as to whether a large buffer between low-scale residential and a church use is in fact a buffer or is it in conflict with the Design Guidelines.

Chairman Gulino stated regarding traffic, his concern is regarding the queuing distances in the center median on Scottsdale Road for left turns coming into the site from the north. He inquired if that was addressed. Mr. Kercher replied the counts done at Morning Vista and Scottsdale Road show during peak hours the volumes are low and would not create those conflicts. Chairman Gulino stated the traffic counts were done in May and June, which is a slower time of year, he inquired if adjustments were made to account for busier times of the year. Mr. Kercher replied in the affirmative.

Chairman Gulino inquired if churches are allowed by right pretty much anywhere. Mr. Grant replied in some districts there are specific church criteria that would need to be met. He reported that in general churches are allowed by right.

**COMMISSIONER SCHWARTZ** requested clarification on the church's right to build a gymnasium. Mr. Grant stated it is difficult to provide certainty. He explained that it would be what would be considered an ancillary use to the main building as a church.

**CHAIRMAN GULINO** requested the commissioners' provide their closing comments.

**COMMISSIONER STEINKE** stated that he was a little disheartened in the mix of all of this we have heard words similar to betrayal, fear, intimidation, and there have been ripples of that throughout the meeting. He further stated that he understands they are passionate about things. He remarked there is a substantial amount of question regarding the mitigation of things that need to be taken care of on that property to make it so it does meet the criteria for the rezoning.

He stated looking at that piece of property given the values that property has in the area that it supports; the current zoning; the limitations and opportunities within the zoning, and the overlays. Did the applicant meet the criteria that was requested of them by the people we entrust the City of Scottsdale and the people who have been asked to survey all of the information did they do that in good faith. Did they do it in a reasonable and respectful way. When I take back to that base value and look at it specific to those questions. I have to say that this applicant has this evening met and during the course of this met the requirements put on them by the City. In such a way that I think they have sincere genuine interest in developing whatever it is this ends up being in a way that is compliant and not detrimental to the neighborhood in their eyes. He commented for that reason I would support this proposal.

He explained this is not a feel good opportunity because of the ripples of division running in this room and that brought us to this point. If anyone wants to glow about those comments, they ought to think twice about that. This is not a glowing endorsement. This is a sorting out some very difficult issues where a number of people have expressed them in feverish pitches.

He remarked regardless of how this turns out if this does pass the City Council I would call upon staff and the applicant to fully understand and comply with all stipulations that are in writing and if anything is left to interpretation be spelled out immediately. He further stated that it ought to be a little embarrassing that you cannot answer the questions about the berm and other things that did not get done.

He expressed his appreciation for the people who are here tonight and the wonderful mix of attitudes and opinions. He stated when it is all said and done they need to then go back into the community and pull people back together and say this is where we are going.

**COMMISSIONER BARNETT** stated at the beginning of the case everyone was arguing the details and by definition, everyone who is here says they meet everything and then we say yes or no. The whole point for being here is because pretty much everything in the code is a subjective decision. The zoning is there to create a logical, predictable pattern of development so you have comparable land uses clustered together. It attempts to create some type of logic to the zoning especially in the residential area.

He remarked that he is looking at a zoning code that is 40 years old and setup in such a way probably never envisioned a church/school with a 5,000 square foot office, basketball court, and with other facilities. All of the sudden they are at a 45,000 square foot facility and Mr. Grant has indicated if they want to build more they can build more. He further remarked it is a subjective decision and to me I feel this is a high intensity use right along a low intense land use. It is still a dirt road there is not even pavement on the roads. This is still rural area.

He reported that this is one of the last scenic corridors in Scottsdale that are not fully built out. The other scenic corridors are fully built out with commercial and not what he would consider a scenic corridor. He reported we have spent a lot of time working on the ESL Ordinance that sets up a position that attempts to defeat high intensity uses like this. He noted looking at the scenic corridors wanting to see a low intensity use and the ESL Ordinance wanting a low intense use. He noted that he does not have anything against schools or gyms. This does not make a lot of sense to be talking about the intensity of this development when there can be a lot of people on this site at one time. He concluded regarding the intensity issue he is not comfortable with this and not in favor of this request.

**COMMISSIONER SCHWARTZ** thanked everyone involved it has been a long road for everyone and contentious at times but at the end of the day hopefully regardless of what the decisions are we would all be able to function and communicate together in a reasonable fashion.

He stated that he has spoken with both sides and it is important that both sides go through this process to consider yourselves ambassadors of good will and continue to have meaningful dialogue regardless of the decision made at this level or by the City Council.

He reported that tonight and over the course of the last two weeks he has been trying to be involved and trying to build a consensus, there was a comment made by Mr. Nelssen regarding what the definition of less intense means. And nobody has been able to describe what less intense means. Less intense is too general. Less intense needs to be descriptive. It says to me, I want something smaller. How do you consolidate uses. How do you create buffers. How do you mitigate impacts to the neighborhood. He further reported that you can't start having meaningful dialogue to draw a plan if you cannot sit down at the table together and define what those elements are and draw the plan together.

He stated that the only way he would support this case is with less intensity and that last intensity is:

- Preservation and protection of 74<sup>th</sup> Street.
- Restriction to no more than a fixed amount of students by square footage and there would be no case to come back and ask for more students to be allowed on the site fixed in perpetuity.
- The asphalt be removed in its entirety and be replaced with decomposed granite.
- Limit outside uses of the gymnasium facility, reduce the size, and consolidate the uses within the gymnasium facility.

He concluded that under those conditions would be the only way in which he would support this case moving forward.

**COMMISSIONER HESS** thanked everyone for coming and for their passion on both sides. He thanked Commissioner Barnett for saying what he wanted to say. He stated that he was not satisfied that the conditions have been met. He further stated that he is very disturbed about traffic and that he felt it is not a safe solution. This is same traffic department that when Dixileta was completely paved and speed became a serious issue their solution, once they did a traffic study, was to raise the speed limit. He further stated that does not give him a lot of confidence.

He remarked that he was not comfortable with the drainage issue. The people who live in Florida could probably best answer the story of probabilities. I don't think they expected four hurricanes in 45 days. He further remarked that kind of devastation could happen here under a different set of circumstances. He concluded that he would not support this request.

**COMMISSIONER HEITEL** stated that he has voiced his concern throughout this hearing. He further stated that he would like to address the disturbing intimidation undercurrent here with a win at any cost the end justifies the means sort of politics of neighborhood destruction that makes him sick. They are taunted that the gymnasium is an important issue but they are taunted that it can be built regardless of what we think. Although Ms. Lagarde has reminded us she was on the Planning Commission, knows the charge we are responsible for, and knows the rules we deal with we still received this Lagarde constitutional doctrine that has a disturbing character to it. As noted in prior discussions the Pastor of the Church is on the radio characterizing the people of north Scottsdale as not wanting a Christian school and that the strong feeling against it would be what he considers a real spiritual warfare. He remarked that he does not like it and he hopes Council takes note of this and sends a very clear message that we are volunteers and are people living in this community and don't need to be intimidated and assaulted like this.

He remarked that he did not believe this case fulfills one of the criteria of the Use Permit. He further remarked that they have made an effort to appear it does but it does not. There are unresolved drainage issues. There are unresolved traffic issues. There is a desecration of 74<sup>th</sup> Street. This is a wonderful project but on the wrong piece of property. You should not be moving into somebody's residential neighborhood with 395-seat theater and 290-car parking lot that is not neighborhood friendly.

He reported that he has never voted against a school, a private, or faith based school. He further reported that he has personally supported them and is a strong advocate and believes they are fundamentally importance to the community. But he cannot do this to this community that has an equally strong and passionate belief in preserving a little bit of the desert character and the years, and years they have worked to try to do that. He concluded that he would not support this case.

**VICE CHAIRMAN STEINBERG** stated that he is looking at it as only a land use and planning issue. I look at the conditions for granting the use permit and things really strike me succinctly is the traffic issue. The project is materially detrimental to the public health, safety, and welfare from a traffic issue. There are poor levels of service that exists that will only be exasperated through another 200 students and the traffic that is associated with a school. He further stated that he

would like to avoid a Pima Los Gatos crash that took two lives recently. This is a very dangerous situation waiting to happen.

He commented that he likes the idea of the school but felt it is in the wrong place. He further commented the flood zone and the wash issue is disturbing. He remarked there is an overall lack of compatibility with the surrounding area. I don't think the current zoning ever envisioned three private schools side by side. The ordinance needs to be revised and perhaps we need certificates of need like they do in certain communities where you can't build too many of any larger type intensive use without getting a certificate of need and proving it is required and warranted. They are seeing a real disruption of the rural lifestyle with the increased traffic from this type of intensive use. It is in conflict with the area Foothills Overlay and ESLO. It contradicts the General Plan by allowing limited number of nonresidential use on residential land.

He expressed his concern regarding monitoring the number of students. This is not planned for 200 students because with 11,000 square feet could accommodate 700 students. He stated that there is something wrong and it does not feel right to impact the neighborhood in such a negative fashion. He concluded that he could not support this request.

**CHAIRMAN GULINO** thanked everyone for being as civil as they were. He stated in general he was disappointed that there could not have been a narrower gap between both sides of this issue. He further stated that he could understand and sympathize with issues raised on both sides of this question. He commented that he agrees with many of the comments made by the commissioners'. In general, I think there is a version of this project that would make sense on this property. I don't think this is it. I agree with Vice Chairman Steinberg's comments that given the ratios that had been discussed for the level of enrollment the site seems to be overbuilt and for that reason he would not support this case as presented.

He stated that he felt there are some issues relative to traffic and drainage but are not anywhere as horrible or detrimental as was implied. He further stated that from his perspective the issues regarding traffic and drainage could have been better presented to us. He remarked that he did think the drainage and traffic issues could be solved. If at some point there is another version of this project that comes through, I would anticipate more specific information on those.

**COMMISSIONER HEITEL MOVED TO FORWARD CASE 7-UP-2004 TO THE CITY COUNCIL WITH A RECOMMENDATION FOR DENIAL. SECOND BY COMMISSIONER HESS.**

**THE MOTION PASSED BY A VOTE OF SIX (6) TO ONE (1) WITH COMMISSIONER STEINKE DISSENTING.**

**ADJOURNMENT**

With no further business to discuss, the regular meeting of the Scottsdale Planning Commission was adjourned at 12:20 a.m.

Respectfully Submitted,

"For the Record " Court Reporters